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## Juanita Castle v. Ralph Castle

Petition for Rehearing 1975-SC-0940

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**KYSC1975-SC-0940-01**

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# **PETITION FOR REHEARING**

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# SUPREME COURT OF KENTUCKY

File No. 75-940

JUANITA CASTLE - - - - - Appellant

*versus*

RALPH CASTLE - - - - - Appellee

APPEAL FROM JOHNSON CIRCUIT COURT  
HON. W. D. SPARKS

## APPELLEE'S PETITION FOR REHEARING

**FILED**

JUL 6 1976

MARTHA LAYNE COLLINS  
CLERK  
SUPREME COURT

J. K. WELLS  
WELLS, PORTER and SCHMITT  
Box 1179  
Paintsville, Kentucky 41240  
*Counsel for Appellee*

This is to certify that a true copy of this Petition for Rehearing has been served on Hon. Robert Greene, Paintsville, Kentucky, Attorney for Appellant; and to Hon. W. D. Sparks, Louisa, Kentucky, Trial Judge, pursuant to RAP 1.250.

  
\_\_\_\_\_  
*Counsel for Appellee*

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# SUPREME COURT OF KENTUCKY

File No. 75-940

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JUANITA CASTLE     -   -   -   -   -   -     *Appellant*

*v.*

RALPH CASTLE     -   -   -   -   -   -     *Appellee*

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## APPELLEE'S PETITION FOR REHEARING

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*May it please the Court:*

### ARGUMENT

Appellee respectfully petitions the Court to modify its opinion herein rendered June 11, 1976, by providing therein that the Promissory Note was not part of the "marital property" and affirming the Judgment in its entirety.

As grounds therefor Appellee state that this Court's opinion that Appellant should be awarded an interest in the Note is predicated on the concept that the Trial Court's finding that the Note was worthless is clearly erroneous.

Appellee finds no fault with this conclusion of this Court. However, the basic issue in connection with the Note was whether it was part of the "marital property," and obviously since the Opinion is silent in this regard, the Court has misconceived the issue presented on the Appeal.

The evidence is uncontradicted (Transcript of Evidence, Volume I, page 73) and it is admitted in Appellant's Brief (Appellant's Brief, page 1), that Appellee, Ralph Castle, together with his three brothers acquired all stock in a coal mining company in 1947. The evidence is uncontradicted that Appellant and Appellee were married on August 20, 1949 (Transcript of Evidence, Vol. I, page 4 and page 35), and this is admitted in Appellant's Brief (Appellant's Brief, page 1).

The disposition of property on dissolution of marriage is now controlled by Kentucky Revised Statutes, Section 403.190.

It provides:

“\* \* \* The Court shall assign each spouse's property to him. It also shall divide the marital property \* \* \*”

This section of Kentucky Revised Statutes also defines very specifically what is included in “marital property,” as follows:

“(2) For the purpose of this Chapter ‘marital property’ means all property acquired by either spouse subsequent to the marriage except: \* \* \*

(b) property acquired in exchange for property acquired before the marriage \* \* \*”

The evidence is also uncontradicted that the Notes in question were acquired by Ralph Castle in exchange for the Stock in the Coal Company which he acquired before the marriage. Very clearly, then, the notes were not “marital property” and the lower Court was com-

pelled, under K.R.S. 403.190, to "assign each spouse's property to him."

Whether or not the Statute achieves perfect justice in this case might be debatable.

But if the Statute is imperfect in its operation, it should be corrected by the Legislature and until changed by the Legislature, it is controlling.

As this Court stated in *Bedinger v. Graybill's Executor and Trustee*, Ky., 302 S. W. 2d 594:

"\* \* \* The Courts are bound by statutory law as written and cannot write into it an exception which the Legislature did not make. *Mastin v. McLain*, 204 Ky. 504, 264 S. W. 1069; *Falls Branch Coal Co. v. Proctor Coal Co.*, 203 Ky. 307, 262 S. W. 300, 37 A.L.R. 1172; *Bank of St Helens v. Mann's Ex'r*, 226 Ky. 381, 11 S. W. 2d 144, 145. However, just and desirable it may sometimes be, the Courts may not supply an omission and thereby give force and effect to a Statute when applied to a subject about which nothing whatever is said, or when to all appearances it is a condition not in the minds of the legislature at all.

\* \* \* Nor may a Statute be disregarded or amended for the purpose of preventing an evil consequence that may follow from the only interpretation of which it is susceptible."

Respectfully submitted,

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# **APPENDIX**



# SUPREME COURT OF KENTUCKY

RENDERED: JUNE 11, 1976

75-940

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JUANITA CASTLE - - - - - *Appellant*

*v.*

RALPH CASTLE - - - - - *Appellee*

---

*Appeal from Johnson Circuit Court  
Honorable W. D. Sparks, Judge  
Civil Action No. CR 5152*

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## MEMORANDUM OPINION PER CURIAM— AFFIRMING IN PART REVERSING IN PART

The court is of the opinion that there was not conclusive evidence that the promissory notes, which appellee and his three brothers received for the sale of the coal mines, were worthless. Appellant was entitled to her marital share of the portion of the notes owned by appellee. The court is of the opinion that the trial court's findings in other respects were not clearly erroneous, and that the court did not abuse its discretion in its division of other marital property or in its award of maintenance.

The judgment is reversed as to the promissory notes and remanded with directions to award appellant the same proportion of appellee's part of the promissory notes as was

awarded to her in respect to other marital property. In all other respects the judgment is affirmed.

All concur.

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